

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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THOMAS J. TADDER  
1635 Pershing Place  
Janesville, WI 53546,

Plaintiff,

Case No. 13-CV-105

v.

UNIVERSITY OF WISCONSIN – ROCK COUNTY  
2909 Kellogg Avenue  
Janesville, WI 53546,

THE BOARD OF REGENTS OF THE  
UNIVERSITY OF WISCONSIN SYSTEM  
1860 Van Hise Hall  
1220 Linden Drive  
Madison, WI 53706,

BRENT SMITH, In His Official Capacity as  
President of the Board of Regents of the  
University of Wisconsin System  
1860 Van Hise Hall  
1220 Linden Drive  
Madison, WI 53706,

and

RAY CROSS, In His Official Capacity as  
Chancellor of the UW Colleges and UW-Extensions  
432 North Lake Street  
Madison, WI 53706,

Defendants.

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**COMPLAINT**

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The plaintiff, Thomas J. Tadder, through his attorneys, Bauer & Bach, LLC, files his complaint against the defendants, University of Wisconsin – Rock County, the Board

of Regents of the University of Wisconsin System, Brent Smith, in his official capacity as President of the Board of Regents of the University of Wisconsin System, and Ray Cross, in his official capacity as Chancellor of the UW Colleges and UW-Extensions, as follows:

### **NATURE OF THE CLAIM**

Plaintiff, Thomas J. Tadder, brings this action pursuant to Title I of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C § 12101 et seq., as well as Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C § 794. Plaintiff alleges that the defendants subjected him to a pattern of adverse actions because of his disability; that the defendants failed to reasonably accommodate his disability; and that defendants terminated his employment, without justification, because of his disability. The court has jurisdiction pursuant to 28 U.S.C. 1331 and venue is proper because the acts occurred in the Western District of Wisconsin.

### **PARTIES**

1. The plaintiff, Thomas J. Tadder (“Tadder”), is an adult resident of the State of Wisconsin and currently resides at 1635 Pershing Place, Janesville, Wisconsin 53546.

2. The defendant, University of Wisconsin – Rock County (“UW-Rock County”), is an agency or subdivision of the State of Wisconsin and is an employer within the meaning of the Americans with Disabilities Act of 1990, as amended (“ADA”). The Chancellor of the UW-Rock County is Ray Cross and the defendant’s principal office is located at 2909 Kellogg Avenue, Janesville, Wisconsin 53546.

3. The defendant, Board of Regents of the University of Wisconsin System (“Board of Regents”), is a governmental body of the State of Wisconsin pursuant to Wis. Stat. §§ 36.07 – 36.11, with its principal office located at 1860 Van Hise Hall, 1220

Linden Drive, Madison, Wisconsin 53706.

4. The defendant, Brent Smith (“Smith”), is an adult resident of the State of Wisconsin whose business address is 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin, Wisconsin 53706. Smith is the current President of the Board of Regents of the University of Wisconsin System.

5. The defendant, Ray Cross (“Cross”), is an adult resident of the State of Wisconsin whose business address is 432 North Lake Street, Madison, Wisconsin 53706. Cross is the current Chancellor of the UW Colleges and UW-Extensions.

### **FACTS**

6. On or about February 24, 1983, plaintiff was appointed to a position as Building Maintenance Helper 2 with the Custodial Department at the University of Wisconsin-Madison (“UW-Madison”). His appointment was the result of an initiative to recruit and employ individuals with mental and/or physical disabilities. A determination had been made in 1982 by a Vocational Rehabilitation Counselor at the Wisconsin Department of Health and Social Services that plaintiff has a substantial vocational/occupational handicap.

7. At all times material to this action plaintiff did, in fact, have both mental and physical disabilities, including diabetes, which affected his ability to perform various tasks.

8. Plaintiff passed his six-month probationary period at UW-Madison and was successfully employed there, given reasonable workplace accommodations, over the next few years.

9. In December 2007, plaintiff applied for a similar custodial position at the University of Wisconsin-Rock County (“UW-Rock County”), located in Janesville,

Wisconsin. He was appointed Building Maintenance Helper II at UW-Rock County effective January 4, 1988, and successfully completed his probationary period.

10. Plaintiff's job description at UW-Rock County included mopping floors, vacuuming carpeting, cleaning blackboards and removing trash. He performed those duties successfully.

11. In 1994, Michael W. Connor became plaintiff's first-line supervisor. At that time, plaintiff's position was titled Custodian II, with substantially the same job responsibilities as before.

12. During his tenure at UW-Rock County under Connor's supervision, Connor was singularly critical of plaintiff's work performance, to a degree he had not experienced previously. For example, Connor complained that plaintiff could not operate a lawnmower or snowblower, tasks which plaintiff's disabilities rendered him unable to perform. Connor also complained that plaintiff was slow in performing other tasks.

13. On February 7, 2008, plaintiff fell while emptying garbage at work. Plaintiff injured his ankle as a result of the fall.

14. At that time, plaintiff was working a late afternoon/night shift that ended at approximately 11 p.m. Often the night shift supervisor, Kevin Kostuch, left work before plaintiff's shift had ended, leaving plaintiff without appropriate supervision.

15. Plaintiff's injury precluded him from completing certain tasks on the night of February 7, 2008, and also rendered him unable to work for approximately one week. Plaintiff duly notified supervisory personnel of his injury, and returned to work a week later.

16. On April 10, 2008, Connor told plaintiff to clean out his locker and that he

was fired. Connor provided plaintiff with a letter stating that the termination was due to plaintiff's failure to remove garbage from his cleaning supply closet and leaving the maintenance shop unlocked on February 7, 2008, the night of his injury.

17. Following his termination, plaintiff applied for unemployment benefits, which his employer contested. Ultimately, an appeal tribunal at the Wisconsin Department of Workforce Development found that the employer had not sustained its burden of showing that the plaintiff had been discharged for misconduct, as alleged, and granted plaintiff's application for benefits.

18. Plaintiff also filed timely charges of discrimination pursuant to Title I of the Americans with Disabilities Act ("ADA"), as amended, and more than 180 days has passed.

19. On October 24, 2011, The United States Equal Employment Opportunity Commission ("EEOC") issued its determination that UW-Rock County is an employer within the meaning of the ADA, that all requirements for coverage have been met, and that the plaintiff was discriminated against in that he is a qualified individual with a disability who was not provided a reasonable accommodation and was terminated.

20. On November 16, 2012, the United States Department of Justice issued plaintiff a Notice of Right to Sue Within 90 Days.

**FIRST CAUSE OF ACTION  
(Violation of ADA)**

21. The plaintiff re-alleges and incorporates paragraphs 1 – 20 as if fully set forth herein.

22. The plaintiff is a qualified individual with a disability within the meaning of Table 1 of the ADA and could perform the essential functions of his job with reasonable

accommodations.

23. The plaintiff requested reasonable accommodations, and at all times material to this action defendants were aware of plaintiff's need for certain workplace accommodations.

24. The defendants are employers within the meaning of, and subject to the ADA.

25. The defendants failed to provide the reasonable accommodations in connection with the plaintiff's employment and ultimately terminated the plaintiff's employment, causing him financial harm and emotional distress.

26. Plaintiff's termination was not due to misconduct, but rather was due to his employers' desire no longer to make reasonable accommodations for plaintiff's disabilities.

27. The defendants' actions were in violation of the ADA.

**SECOND CAUSE OF ACTION  
(Violation of Rehabilitation Act of 1973)**

28. The plaintiff re-alleges and incorporates paragraphs 1 – 27 as if fully set forth herein.

29. Plaintiff is a qualified individual with a disability in the United States, as defined in 29 U.S.C § 705(20).

30. Solely by reason of his disability, plaintiff was excluded from participation in, denied the benefits of, and subjected to discrimination under a program or activity, as defined in 29 U.S.C. § 794(b), conducted by the defendants.

31. Upon information and belief, at all times material to this complaint, the University of Wisconsin System, or any part of it, including UW-Rock County, received financial assistance from the United States Government.

32. Accordingly, at all times material to this complaint, the defendants were

subject to, and with respect to the plaintiff acted in violation of, the Rehabilitation Act of 1973, as amended.

WHEREFORE, the plaintiff demands the following:

- a. Reinstatement and back pay;
- b. Compensatory damages for the emotional injury, distress, and physical pain and suffering;
- c. An injunction against the defendants ordering that they cease and desist the discriminatory practices towards the plaintiff;
- d. Punitive damages;
- e. Reasonable attorney's fees and costs incurred in both the administrative actions before the EEOC as well as the Federal Court; and
- f. Any other relief the court may deem just and proper.

PLAINTIFF DEMANDS A JURY TRIAL.

Dated this 13<sup>th</sup> day of February, 2013.

**BAUER & BACH, LLC**  
*Counsel for Plaintiff*

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